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as Receiver for PROSPERO VENTURES, L.P.

UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA

U.S. SMALL BUSINESS  
ADMINISTRATION, as Receiver for  
PROSPERO VENTURES, L.P.,

Plaintiff,

v.

DONALD K. EMERY,

Defendant.

NO. C 07-03741 VRW

**Related Cases:**

C 07-03732, C 07-03733, C 07-03735,  
C 07-03736, C 07-03737, C 07-03738,  
C 07-03739, C 07-03740

**DECLARATION OF CHRISTINE J.  
LEVIN IN SUPPORT OF NOTICE OF  
NO OPPOSITION TO PLAINTIFF'S  
MOTION TO STRIKE  
AFFIRMATIVE DEFENSES**

Date: May 8, 2008

Time: 2:30 p.m.

Ctrm: 6, 17<sup>th</sup> Floor

Date Complaint Filed: July 19, 2007

Trial Date: Not yet set

DECLARATION OF CHRISTINE J. LEVIN

1. I am an attorney at law duly licensed to practice before all the courts of the State of California and am an associate with the law firm of Coleman & Horowitz, LLP, attorneys of record for Plaintiff, U.S. SMALL BUSINESS ADMINISTRATION, as Receiver for PROSPERO

1 VENTURES, L.P.

2 2. I have personal knowledge of the facts contained herein and if called upon as a  
3 witness, I could testify competently thereto.

4 3. This declaration is filed in support of this Statement of Non-Opposition to Motion  
5 to Strike.

6 4. On March 20, 2008, this Court set a briefing schedule for the Motion to Strike  
7 Defendant's Affirmative Defenses. Pursuant to that schedule, Defendant's Opposition to  
8 the Motion to Strike was due on April 17, 2008.

9 5. On April 16, 2008, Defendant inquired as to whether Plaintiff would grant an  
10 extension of time for the filing of the Opposition. Plaintiff stated that it would not oppose  
11 Defendant's request so long as counsel had sufficient time to respond, but noted that whether an  
12 extension would be granted or denied was between counsel and the Court.

13 6. On April 17, 2008, there was no order from the Court extending Defendant's time  
14 to file the Opposition to Strike Affirmative Defenses. Despite the fact that there was no order  
15 granting Defendant's request for an extension of time, Defendant did not file his Opposition to  
16 Plaintiff's Motion to Strike Affirmative Defenses.

17 7. At this time, no opposition has been opposition has been filed to Plaintiff's  
18 Motion to Strike Affirmative Defenses.

19 I declare under penalty of perjury under the laws of the State of California that the  
20 foregoing is true and correct.

21 Dated: April 21, 2008

Respectfully submitted,

22  
23 COLEMAN & HOROWITT, LLP

24  
25  
26 By: /S/  
27 CHRISTINE J. LEVIN  
28 Attorneys for Plaintiff,  
U.S. SMALL BUSINESS ADMINISTRATION, as  
Receiver for PROSPERO VENTURES, L.P.

**PROOF OF SERVICE**

I declare that I am a citizen of the United States of America and a resident of the County of Fresno. I am over the age of eighteen (18) years and not a party to the within action. My business address is 499 West Shaw, Suite 116, Fresno, California 93704.

On April 21, 2008, I served the foregoing document(s) described as **DECLARATION OF CHRISTINE J. LEVIN IN SUPPORT OF NOTICE OF NO OPPOSITION TO PLAINTIFF'S MOTION TO STRIKE AFFIRMATIVE DEFENSES** on the interested parties, addressed as stated on the attached service list.

☒ BY MAIL - by placing ☒ a true and correct copy ☐ the original thereof enclosed in a sealed envelope with postage thereon fully prepaid in the firm's outgoing mail. I am "readily familiar" with the firm's practice of collecting and processing correspondence for mailing. It is deposited with United States Postal Service on that same day in the ordinary course of business.

☒ BY CALIFORNIA OVERNIGHT - by placing ☒ a true and correct copy ☐ the original thereof enclosed in a sealed envelope for delivery via California Overnight next day delivery to the addressee noted above.

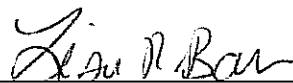
☐ BY HAND DELIVERY - by delivering by hand and leaving a true copy with the person and at the address shown above.

☐ BY FACSIMILE TRANSMISSION - by causing a true facsimile thereof to be electronically transmitted to the parties, by using their facsimile number indicated on the attached service list.

☐ STATE: I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

☒ FEDERAL: I declare that I am employed in the office of a member of the bar of this court at whose direction service was made.

Executed on April 21, 2008, at Fresno, California.

  
\_\_\_\_\_  
Lisa R. Barr

Service List

**Via Mail and Electronic Mail:**

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Attorneys for Defendants

**Via California Overnight:**

Chambers Copies

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